IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.130 OF 2004

Smt. Krishnabai Bapu Patil ..Appellant

versus

Shri Raosa Bapu Patil ..Respondent.

Mr.A.A.Kumbhakoni for the Appellant

Mr.D.V.Sutar for the Respondent No.1
Mr.A.P.Kulkarni for Respondent Nos.3 to 15

Coram : S.R.Sathe, J.
Dated : 3rd Feb., 2006

P.C.

1. Heard both the learned Advocates.

2. The respondent No.1, the original plaintiff had filed suit for partition and separate possession against his mother, brothers and sisters.

3. The said suit was opposed by Defendant No.1, the mother of the plaintiff. She admitted the relations and also submitted that she is ready to give plaintiffs share in the property as per the provisions of law. However, at the same time she contended that she has become the absolute owner of the suit property by virtue of Section 14 of Hindu Succession Act.

4. After considering the evidence adduced by both the parties, the trial court came to the conclusion that there was no substance in the contention of the defendant that she has become the absolute owner of the suit property. He also held that the plaintiff and defendant Nos.1 to 6 have 12/88 share each in the suit properties and the defendants 7 to 9 are having 1/88 share each and the said finding was challenged by the original defendant no.1 in regular civil appeal 258 of 2002. The first appellate court also came to the conclusion that the judgment and decree passed by the trial court is correct. He, therefore, dismissed the appeal. However, while doing so it was observed in paragraph 18 of his judgment that the share of plaintiff is 11/88th. Being aggrieved by that order the original defendant has filed the present second appeal.

5. Shri Kumbhakoni, learned advocate for the appellant submits that the observations made by the learned Additional District Judge in paragraph 18 of his judgment are not correct. Even the learned Advocate for the respondent could not support the said observations. Considering the provisions of

Hindu Succession Act it is very clear that the father of the plaintiff was having 1/8th share in the property and after his death the said share is to be divided amongst his heirs namely plaintiff, his five brothers, four sisters and mother. So, each one of them is entitled to get 11/88 share. Thus, plaintiff is entitled to get his own share 1/8 + 11/88 = 12/88 share. Naturally the observation made by the first appellate court in this behalf in paragraph No.18 is not correct. In fact, it is clear that ultimately he has upheld the judgment and order passed by the trial judge and dismissed the appeal. So, there is no necessity to interfere with the final order passed by the first appellate court.

6. In view of the above, there is no substance in the present appeal and the same is dismissed in limine with above observations.

(S.R.Sathe, J.)